IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORGINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.783 OF 2005
IN
SUIT NO.1905 OF 2000

Smt.Manjula Meghji Shah Chhadva ...Plaintiff

V/s.

Anandji Meghji Chheda & Ors. ...Defendants

Shri.S.K. Jain for the plaintiff.
Shri.P.M. Shah for the defendants.

CORAM : D.K. DESHMUKH, J.
DATED : 08/09/2006

P.C.:-

1. Plaintiff Smt.Manjula has filed suit claiming that she was living together with deceased Meghji Shah as his wife for several years. According to her, tenancy of the suit premises was held by Meghji Shah and his mother from the owners pursuant to the deed of assignment dated 10th August, 1972. According to plaintiff on 1st July, 1974 Meghji Shah and his mother permitted the defendants to conduct the business in the premises. According to plaintiff, mother of Meghji Shah died on 5/11/1994 and Meghji Shah died on 13/4/1997. According to her, the agreement is terminated by

notice dated 23rd August, 1999 and therefore she is entitled to possession of the premises where the business is conducted. Meghji Shah and his mother were tenants of those premises. In the suit she is claiming that she is entitled to possession of the premises.

2. First objection raised by defendants is that even assuming the case that Meghji Shah and his mother were tenants of the premises as claimed by the plaintiff, plaintiff not being legal heir of Meghji Shah has no connection with the premises. According to defendants, Meghji Shah during his life time had made affidavit to the effect that he has surrendered tenancy of the premises in favour of defendants and that he had also permitted defendants to change their business. Defendants also produced documents to show that during the lifetime of Meghji Shah they had changed business from sale of sweets to readymade garment. According to the defendants therefore, they are tenants of premises. They have also filed suit against landlord which is pending in the Small Causes Court.

3. Plaintiff has stated in para one of the plaint that she was leaving together with Meghji Shah as his wife for several years and three daughters were also born to her. But in the suit she has nowhere claimed that she is legally married wife of Meghji. Defendants in the reply in para four have stated that Meghji was married to one Smt.Madhuri Meghji Shah and that said Meghji died intestate leaving behind him Smt.Madhuri as his widow, one son and two daughters as his heirs and legal representatives.

4. In the rejoinder plaintiff admits that Madhuri Mehgji Shah is the widow of Meghji. It is an admitted position that Meghji was married to Madhuri Meghji Shah, therefore it was for the plaintiff first to assent and then to establish that she was legally married to Meghji Shah. There is no pleading that plaintiff was legally married to deceased Meghji Shah. There is no document produced on record which will indicate that plaintiff was married to Meghji Shah. Plaintiff was not wife of Meghji Shah, therefore, she can not be heir of Meghji Shah. Reliance placed on the will

alleged to have been made by Meghji is of no use because tenancy can not be bequeathed. So far as the case of the plaintiff that only right to conduct the business was given and sub-tenancy of premises was not given to the defendants, the affidavit of Meghji on which reliance is placed by the defendants shows that the facts are otherwise. Case of the plaintiff that defendants have fabricated documents can not be accepted because by the affidavit Meghji Shah gave permission to defendants to change their business from sale of sweets to readymade garment and the defendants have produced documents which show that they actually changed the business during the lifetime of Meghji Shah. Even assuming that initially business might have been given for conducting, then also permission granted by Meghji for conversion of business, in my opinion, changes the relationship between the parties and it appears that the premises were sub-let by Meghji to the defendants.

5. Taking overall view of the matter therefore, firstly it can not be said that plaintiff has made out a prima facie case that she is entitled to

possession of the premises and secondly it can not be said that defendants are in possession unauthorizedly. In my opinion, therefore, plaintiff is not entitled to interim relief. Notice of motion is disposed of.

(D.K. DESHMUKH, J.)